

Montana Water Court
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FILED
02/21/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41G-0538-R-2022
Weisz, Madeleine
9.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Adam T. Lynn

OBJECTOR: United States of America (USDA Forest
Service)

CASE 41G-0538-R-2022
41G 206742-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41G 206742-00 appeared in the 41G Preliminary Decree. The claim received a DNRC issue remark and an objection from the United States of America Forest Service.

2. On January 26, 2023, the parties filed a Stipulation resolving the United States objection to the claim. In the Stipulation, the parties request that place of use no. 2 be corrected from Section 22 to Section 15.

3. An information remark was placed on the claim pursuant to a Master's Report and Order Adopting from 1993 in Case 41G-212. The information remark states:

PLACE OF USE CONSISTS OF THAT PORTION OF NWNWNW SEC 22, T03S, R03W, AND SWSWSW SEC 15, T03S, R03W, MADISON COUNTY KNOWN AS THE WILLIAM FLY LODGE, MINERAL SURVEY NO. 4068.

It appears that a clerical error resulted in place of use no. 2 being identified in Section 22 rather than Section 15 on the claim abstract. The requested correction to the place of use is necessary to be consistent with the place of use described in the information remark, which was added as a result of a stipulation between the parties in Case 41G-212. Place of use no. 2 should be corrected to the SWSWSW of Section 15, T3S, R3W.

4. Claim 41G 206742-00 appeared in the 41G Preliminary Decree with the following issue remark:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

This remark is considered a notice issue remark. It provides notice that the ditch name was modified prior to the issuance of the Preliminary Decree. No objections were filed to ditch name. The remark has served its purpose of providing notice and should be removed from the claim abstract.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. The settlement documentation in this Case is supported by the information before the court and should be accepted.

3. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA. The issue remark appearing on claim 41G 206742-00 does not overcome the prima facie status of the claim.

RECOMMENDATIONS

1. Claim 41G 206742-00 should be modified as provided above.

2. The issue remark should be removed from claim 41G 206742-00.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

~~Adam T. Lynn~~
~~935 NW Valley View Dr.~~
~~Pullman, WA 99163~~
(Return mail received)

~~Adam T. Lynn~~
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(Return mail received)

Adam T. Lynn
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 206742-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ADAM T LYNN
724 N FREEZE CREEK CIR
SALT LAKE CITY, UT 84108 1693

Priority Date: SEPTEMBER 3, 1887

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: 25.00 GPM

Volume: 1.50 AC-FT

Households: 1

***Maximum Acres:** 0.50

***Source Name:** UNNAMED TRIBUTARY OF SOUTH WILLOW CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNWNW	22	3S	3W	MADISON

Period of Diversion: JUNE 1 TO SEPTEMBER 1

Diversion Means: PIPELINE

Ditch Name: PROSPECT PIPELINE

POINT OF DIVERSION CONSISTS OF THAT PORTION OF NWNWNW SEC 22, T03S, R03W, MADISON COUNTY KNOWN AS THE WILLIAM FLY LODE, MINERAL SURVEY NO. 4068.

Period of Use: JUNE 1 TO SEPTEMBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.25		NWNWNW	22	3S	3W	MADISON
2	0.25		SWSWSW	15	3S	3W	MADISON
Total:	0.50						

PLACE OF USE CONSISTS OF THAT PORTION OF NWNWNW SEC 22, T03S, R03W, AND SWSWSW SEC 15, T03S, R03W, MADISON COUNTY KNOWN AS THE WILLIAM FLY LODE, MINERAL SURVEY NO. 4068.